90-547

Case No. _____

SUPREME COURT, U.S.
FILED
AUG 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1990

KENNETH B. QUANSAH, JR.,
Petitioner,

v.

CITY OF NEW YORK, et al.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

KENNETH B. QUANSAH, JR.
Petitioner, pro se
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QUESTION PRESENTED

1. Did the United States Court of Appeals for the Second Circuit properly dismiss petitioner's de novo appeal on the grounds that his complaint was insufficient and failed to state a claim upon which relief can be granted but his Title 42, Section 1983 claims were invalid, unconstitutional, barred by a State Law (New York Gen. Mun. Law § 50-e) which requires notice of claim within ninety days after the cause of action arose?

2. Did the Second Circuit Court of Appeals properly dismiss petitioner's de novo appeal but it did not deprive him the Civil Rights under Title 42, U.S.C. §§§ 1981, 1983, 1985 and the Constitutional right under Fourth Amendment, Fourteenth Amendment?

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KENNETH B. QUANSAH, JR.,

Petitioner,

v.

CITY OF NEW YORK and PEOPLE OF COUNTY OF NEW YORK, POLICE DEPARTMENT, CITY OF NEW YORK and COUNTY OF NEW YORK,

Respondents.

OPINION BELOW

Petitioner filed a complaint in U.S. District court for the Southern District of New York against above respondents and the District court dismissed the complaint. Petitioner subsequently, filed de novo appeal in the District court and U.S. Court of Appeals for the Second Circuit filed an order on March 6, 1990 to dismiss the appeal. A copy is attached hereto as Appendix 3. The petition for rehearing was denied in an order dated May 7, 1990. A copy is attached hereto as Appendix 2.

JURISDICTION

The jurisdiction of this court is invoked 28 U.S.C. §§§§ 1251(3), 1252, 1254(1), 1254(2). The Second Circuit Court of Appeals dismissed petitioner's appeal invalidated Act of Congress on grounds of a State Law in an order dated March 6, 1990. Petitioner consequently, invoked 28 U.S.C. §§ 1291, 1292(a)(1) in the Appeals court for the Second Circuit for want of jurisdiction. Petitioner invoked 28 U.S.C. §§§ 1332, 1343(a), 1391 to confer jurisdiction to the District court. Petitioner's notice of Appeal for review in Supreme Court of the United States was filed on April 3, 1990 but was returned to him as abolished. Quansah is a resident of San Jose, California.

STATUTE INVOLVED

The statutes involved in Quansah v. City of New York et al. are Title 42 U.S.C. §§§ 1981, 1983, 1985. Other statutes involved are Title 28 U.S.C. §§ 1653, 1654. Title 28 U.S.C. § 2403(a) might apply due to the circumstances of this case. A statute also involved is a State Law (New York Gen. Mun. Law § 50-e).

Portion of these statutes are provided in relevant parts and attached hereto as Appendix 1.

STATEMENT OF THE CASE

Quansah was the plaintiff/appellant, pro-se in previous Lawsuit Quansah v. Baruch College et al and City Law Corporation attorneys represented Baruch College, et al, agencies of City of New York. Quansah claims, defendants/appellees Baruch College et al motioned to expedite the appeal when it was time for them to file brief. Quansah claims after he filed his response motion defendants/apellees motion was denied. Baruch College et al herein, refused to file their brief in the Second Circuit and refused any correspondence.

Quansah subsequently went to City Law Corporation offices in New York City on December 3, 1987 to settle this case after notices and visits. Quansah claims while waiting in the City Law Corporation reception upon the corporation counsel's request and permission, New York City police rushed in the reception in a swarm. Quansah contends the police officers refused in their numbers to identify themselves and in a concert arrested him. Quansah therein was detained/imprisoned for four days in many cells in different boroughs, inconvenient for anyone to bail him before his arraignment and release. Quansah, as a result, suffered humiliation, mental depression, mental as well as emotional distress, fears to disregard, weight loss and monetary harms.

Quansah thereafter, filed a lawsuit in the U.S. District court with fears that such arrest will recur as a pro-se litigant. Quansah therein claimed violation of his rights under Title 42, U.S.C. §§§ 1981, 1983, 1985 and asserted Constitutional deprivation under Fourth Amendment as well as Fourteenth Amendment.

Quansah invoked 28 U.S.C. §§ 1332, 1343(a) in his original complaint to confer jurisdiction to the District court. The District court dismissed the complaint on June 26, 1989 at the instant of respondents motion to dismiss for failure to state a claim upon which relief can be granted and also to claim that Quansah's Section 1983 claims are barred by State

Law (New York Gen. Mun. Law § 50-e) without prejudice to refiling a complaint on or before July 31, 1989. Quansah claims the District court judge spontaneously issued a final judgment on July 6, 1989 to dismiss the entire case. Quansah claims, he replied respondents motion therein agreed to amend any specific claim which was ambiguous to understand and seeked for a trial but the district court did not give this case a chance herein, hurried its dismissal. Quansah claims, the District court judgment is in conflict with the District court order therefore the District court erred in disposing of the complaint and this is a reversible error.

Quansah as a result filed an appeal de novo in the District court and invoked 28 U.S.C. § 1292a(1) for the subject matter jurisdiction. Quansah further invoked 28 U.S.C. § 1343(a) on grounds of jurisdiction. The Appeals Court for the Second Circuit dismissed the appeal Sua Sponte of the grounds that his complaint was insufficient and his Section 1983 claims were barred, invalid and unconstitutional by a State Law (New York Gen. Mun. Law § 50-e) which requires notice of claim within ninety days after the cause of action arose. Quansah claims, a complaint in which the adverse parties did answer and claimed his Section 1983 claims were barred by State Law (New York Gen. Mun. Law § 50-e) stated a claim and need not to be amended therefore this is a reversible error.

Quansah filed a petition for rehearing in the Appeals Court for the Second Circuit and the petition was denied in an order filed May 7, 1990.

Quansah avers 28 U.S.C. § 2403 and claims the Constitutionality of an act of Congress affecting the public interest is drawn in question and the above citation might be applicable.

Quansah claims the Second Circuit Court of Appeals did not certify such facts to the Attorney General.

Quansah claims the Supreme Court of the United States is compelled to conduct a comprehensive examination into this matter for a just resolution.

Quansah seeks to appear in Supreme Court of the United States to argue all relevant issues he could not present.

STATEMENT OF REASONS

Quansah claims, to imprison civilized people before arraignment or public trial is a burden and something of the past.

Quansah argues, the U.S. District court for the Southern district of New York and the Second Circuit Court of Appeals erred in dismissing his complaint and appeal for failure to state a claim upon which relief can be granted therein, invalidating acts of congress of the grounds that his Section 1983 claims were barred by a State Law (New York Gen. Mun. Law § 50-e).

Quansah argues, since respondents claim his Section 1983 claims were barred by a State Law, his complaint stated a claim upon which relief can be granted and therefore, the District court erred in dismissing his complaint. We must reason to resolve what are the claims of false arrest and false imprisonment in Section 1983 claim.

Quansah alleges the District court issued the order dismissing his complaint on June 26, 1989 with leave to refile the complaint on or before July 31, 1989, however, the District court again issued a judgment on July 6, 1989 to dismiss the entire complaint while the time to refile his complaint has not expired. Quansah alleges the leave to amend or refile his complaint did not expire; therefore, the District Court erred in dismissing the complaint and this is a reversible error, but the Second Circuit Court of Appeals did not give any ruling to this issue. Quansah alleges, this is in serious conflict with decisions of this court and decisions of other Court of Appeals.

Quansah argues, he alleged violation of his rights under Title 42, Sections 1981, 1983 and 1985 in the lower court. Quansah herein, argues, the mere averment of Title 42 and above sections demonstrate his complaint stated claims. Quansah alleges, failure to state a claim is not an issue to defeat his complaint.

Quansah alleges, paragraph five of the Second Circuit order asserted that "we agree with the District court's holding that the allegations in Quansah's complaint are insufficient" and therefore dismissed the case as insufficient. Quansah argues, this case was dismissed upon respondents motion to dismiss in the lower court for failure to state a claim herein, the District court did not explain its order and judgment but granted respondents motion to dismiss. Quansah herein alleges the Second Circuit erred in dismissing the appeal on the grounds that the complaint was insufficient and therefore this is a reversible error. Quansah argues, the Second Circuit Court of Appeals must not affirm any unfounded allegation.

Quansah argues, failure to state a claim nor the insufficiency of his complaint are obviously not the issue for the dismissal of this case. See Mitchum v. Purvis, 650 F. 2d 647 (5th Cir. 1981); Heidelberg v. Hammer, 577 F. 2d 429 (7th Cir. 1978); McKinley v. City of Eloy, 705 F. 2d 1110 (1983); Rudolph v. Locke, 594 F. 2d 1076 (5th Cir. 1979); Haines v. Kerner, 404 U.S. 519, 520-521, 30 L Ed 2d 652, 92 S. Ct 594 (1972). Quansah alleges, at this juncture, it was impossible for him to find an attorney to refile his complaint within ten days after the dismissal of his complaint in the District court. Quansah argues, the courts below hurried him into conclusions, therefore, this is a reversible error. Also see "Angola v. Civiletti, 666 F. 2d 1, 4 (2d Cir. 1981)" recited by Second Circuit in its order obviously making the Second Circuit order to this entitled case a reversible error.

Quansah argues, the Second Circuit Court of Appeals denied City Law Corporation's motion to dismiss a previous case in which City Law Corporation Attorneys represented a

number of City of New York agencies as the defendants/ appellees. Quansah alleges he was the plaintiff/appellant, pro-se in that previous case. Quansah argues, City Law Corporation refused to file defendant's/Appellees' brief after the denial of their motion. Quansah alleges he wrote letters to Second Circuit and City Law Corporation about settlement but neither responded to his letters. Quansah visited the corporation counsels but never met them to discuss any settlement. Quansah argues he is a black African who was invidiously discriminated against as a member of Bronx Community College, August 1975 class and Bernard M. Baruch College, Fall 1977, Certified Public Accountants (C.P.A.) class. The above Colleges intentionally refused him graduation for no cause of action. Quansah alleges, after a prior settlement letters he went to City Law Corporation offices to meet the Corporation Counsel, Mr. Peter Zimroth. Quansah argues, while waiting in the reception upon the request and permission of Mr. Zimroth, the Chief Clerk at City Law Corporation conspired with some employees herein, a swarm of police officers rushed on him and false arrested him in a concert. Quansah alleges there were so many police officers he can not identify. However, there is one police officer he could identify and that was the police officer who filed charges against him in the Criminal Court. This police officer did not take part in his arrest but was at the vicinity of the City Law Corporation offices. Quansah alleges after the arrest he was searched, frisked and taken to many cells in different boroughs for four days. Quansah argues, such false arrest and false detention/imprisonment without a warrant is in violation to his protection under the above statutes. Quansah argues, he was pro-se litigant and he was very well protected by the Statutes of Congress. The Second Circuit herein claims in its order that the attorneys for respondents alleged that the previous case was dismissed hence Quansah had no right to be in their offices. However, there was no legitimate order on the record of the appeal which proves that case was dismissed. Apparently, there was an order on the record of the Appeal which proves the previous case was denied. Quansah vexes herein, demands a careful study into

the disposal of that previous case and his Section 1985 claims. Quansah alleges, the police officer who filed the charges against him did not take part in his arrest herein, he did not identify him as required by the Statutes of Congress to identify conspirators. Quansah however, identified the Police Department hence, there were too many police officers and they refused to identify themselves. Quansah alleges, he also cited the Criminal Court docket number in his original complaint to identify those police officers. Quansah argues the actions, edicts as well as the conduct of the police officers' must be considered official policy and under color of State Laws.

Quansah argues, as a result of the above, his Civil Rights were violated under Title 42, U.S.C. §§ 1981, 1985 and his Constitutional rights deprived under Fourteenth Amendment for equal protection of the laws. See Anderson v. United States, 417 U.S. 211, 41 L Ed 2d 20, 94 S Ct 2253 (1974); Kush v. Rutledge, 460 U.S. 719, 75 L Ed 2d 413, 103 S Ct 1483 (1983); Griffin v. Breckenridge, 403 U.S. 88 29 L Ed 2d 338, 91 S Ct. 1790 (1971); Williams v. Codd, 459 F. Supp. 804 (1978).

Quansah argues, a swarm of police officers rushed on him and false arrested him. The police officers in their great numbers refused to identify themselves. Quansah alleges this is the Law Corporation which handles or represents all police cases therefore the officers came in great numbers. Quansah argues he was a pro-se litigant very well protected under Section 1985 of Title 42 and Title 28, Section 1654. However, he was arrested without a probable cause. Quansah argues, trespass 3rd degree under New York (PL 140.10) was not an issue due to his well informed appearance in a Public Law Corporation Office. Quansah alleges, he was searched and frisked so many times hence, he was transported to many cells in different boroughs inconvenient for any relative to bail him. Quansah argues he stayed in this condition for four days before his arraignment. Quansah contends the delay in his arraignment must be decided by a jury. Quansah alleges, the roughing of handcuffs must be determined by

the jury. Quansah argues the ultimate issues in this entitled case are for the jury and the jury must determine the illegal false arrest and false detention/imprisonment for four days in which it was practically inconvenient for any relative to bail him. Quansah alleges, since the jury is the triers of fact, this is a reversible error. The District court and the Second Circuit stated in their orders that Quansah's Section 1983 claims were barred by State Law (New York Gen. Mun. Law § 50-e) therefore, invalidating Acts of Congress. Quansah alleges, no notice of right to sue is required in prosecuting Section 1983. Quansah argues, as a result of the above, his Civil Rights were violated under Title 42, U.S.C. §§ 1981, 1983 and his Constitutional rights deprived under the Fourth Amendment for unreasonable searches and seizures; Fourteenth Amendment under the equal protection of the laws, liberty and the due process of law.

Quansah argues, he physically suffered humiliation, mental depression, mental as well as emotional distress, weight loss, monetary harms and fears to disregard. Quansah alleges, liability must rest on respondents. See Dunaway v. New York, 442 U.S. 200, 60 L Ed 2d 824, 99 S Ct 2248 (1979); Fiacco v. Rensselaer, 783 F. 2d 319 (2nd Cir. 1986); Gilker v. Baker, 576 F. 2d 245 (1978); Brown v. Byer, 870 F. 2d 975 (5th Cir. 1989); Hall v. Ochs, 817 F. 2d 920 (1st Cir. 1987); McKenzie v. Lamb, 738 F. 2d 1005 (1984); Melear v. Spears, 862 F. 2d 1177 (5th Cir. 1989)

Quansah argues it will be notably worthy if this court could re-examine the date on which the District court gave its order and judgment in contrast to Second Circuit's citation in its order on the issue of expiration of due dates in this entitled case. See "Salahuddin v. Cuomo, 861 F. 2d 40, 43 (2d Cir. 1988)". Again see Monell v. New York City Dept. of Social Services, 436 U.S. 658, 56 L Ed 2d 611, 98 S Ct 2018 at 2037-38 (1978) for the determination of liability.

Conclusion

Quansah seeks to recovery from such unreasonable burden from above case. Quansah claims the above case must be reversed. Quansah further demands that pro-se litigants must be well protected. Quansah claims no attorney wanted to take up his case but he has the right to redress.

DATED: San Jose, California
June 18, 1990

Respectfully Submitted,

/S/ KENNETH B. QUANSAH, JR.

KENNETH B. QUANSAH, JR.
Petitioner, pro-se
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San Jose, CA 95151-5759
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CERTIFICATE OF SERVICE

On August 1, 1990 I served the attached document entitled Petition For a Writ of Certiorari by mailing two copies certified, first class, postage prepaid, return receipt requested to respondents counsels in above case and Solicitor General by attached addresses.

/S/ KENNETH B. QUANSAH, JR.

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Solicitor General
Department of Justice
Washington, D.C. 20530

APPENDICES

STATUTE INVOLVED

42 U.S.C. § 1981 provides in relevant part:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other".

42 U.S.C. § 1983 provides in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

42 U.S.C. § 1985 provides in relevant part:

(b). Obstructing justice; intimidating party, witness, or juror

"If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; of if two or more persons conspire for the purpose of impeding hindering, obstructing, or defeating, in any manner, the due course of justice in any

State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

28 U.S.C. § 1343(a)(3) provides in relevant part:

"To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

28 U.S.C. § 1653 provides in relevant part:

Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

28 U.S.C. § 1654 provides in relevant part:

Appearance personally or by counsel

In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

General Municipal Law § 50-e provides in relevant part:

Notice of Claim:

1. When service required; time for service; upon whom service required.

(a) In any case founded upon text where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general construction law, or any officer, appointee or employee thereof, the notice of claim shall comply with and be served in accordance with the provisions of this section within ninety days after the claim arises... (emphasis added)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED: MAY 7, 1990
NO. 89-7819

Present:

Hon. James L. Oakes, Ch.J.
Hon. Amalya L. Kearse, C.J.
Hon. Betty B. Fletcher, C.J.*
Circuit Judges,

KENNETH B. QUANSAH, JR.,
Plaintiff-Appellant,

vs.

CITY OF NEW YORK AND PEOPLE OF COUNTY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, CITY OF NEW YORK AND COUNTY OF NEW YORK,
Defendant-Appellees.

A petition for rehearing having been filed herein by Pro Se Appellant,
KENNETH B. QUANSAH, JR.,

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition be and it hereby is DENIED.

Elaine B. Goldsmith, Clerk

* Hon. Betty B. Fletcher, C.J., Ninth Circuit, sitting by designation

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED: MAR. 6, 1990
NO. 89-7819

Present:

Hon. James L. Oakes, Chief Judge.
Hon. Amalya L. Kearse, Circuit Judge.
Hon. Betty B. Fletcher, Circuit Judge.[1]

KENNETH B. QUANSAH, JR.
Appellant,

vs.

CITY OF NEW YORK AND PEOPLE OF COUNTY OF NEW YORK: POLICE DEPARTMENT, CITY OF NEW YORK AND COUNTY OR NEW YORK,
Appellees.

ORDER

Kenneth B. Quansah, Jr., pro se, appeals a July 6, 1989, order of the United States District Court for the Southern District of New York, John E. Sprizzo, Judge, dismissing his complaint without prejudice to refiling on or before July 31, 1989. We affirm.

In his complaint, Quansah alleges three separate causes of action arising out of his attempt in 1987 to obtain settlement of his previous lawsuit against the City of New York which had been dismissed with prejudice in 1981. He claims, first, that the Corporation Counsel of the City of New York and the New York City Police Department, in violation of 42 U.S.C. §§ 1981 and 1985 (1982), conspired to deny him a fair settlement by arresting him under false pretenses while he was waiting in the reception area of the Office of the Corporation Counsel. He moreover claims that the arresting

[1]Of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

officers used excessive force and placed him in custody for three days, in violation of his due process rights, and that the Police Department committed libel and slander against him and acted negligently by recording the arrest charge into his permanent record even though the charge had ultimately been dismissed.

At a pre-trial conference with Quansah and an Assistant Corporation Counsel concerning Quansah's allegations, the district court stated that it "was prepared to dismiss the complaint on the grounds that it is insufficient, without prejudice to [plaintiff's] filing a sufficient or a different complaint within sixty days." After Quansah indicated his unwillingness to submit an amended complaint, the district court dismissed the complaint without prejudice.

Although a district court's dismissal of a complaint with leave to amend is generally not an appealable final order under 28 U.S.C. § 1291 (1982), we have treated such orders as final where a "disclaimer of intent to amend effectively cures the nonfinal character of the judgment from which the appeal has been taken." Connecticut Nat'l Bank v. Fluor Corp., 808 F.2d 957, 960-61 (2d Cir. 1987). Because Quansah announced his intention not to file an amended complaint, and the time to file an amended complaint has expired, we find the district court's order appealable.

Nevertheless, we agree with the district court's holding that the allegations in Quansah's complaint are insufficient. We note initially that his section 1981 and section 1985 challenges to his arrest must fall due to his failure to allege that he is a member of a protected class or that his arrests were the result of racial or other class-based discrimination. See generally Gleason v. McBride, 869 F.2d 688, 694-95 (2d Cir. 1989) (discussing pleading requirements for section 1985 claim); Friedman v. Village of Skokie, 763 F.2d 236, 238 (7th Cir. 1985) (dismissing pro se plaintiff's section 1981 and section 1985 claims for false arrest and prosecution). Moreover, his section 1983 claim alleging due process violations fails to state the "more than mere conclusory allegations," Salahuddin v. Cuomo, 861 F. 2d 40, 43 (2d Cir. 1988)

(citation omitted), needed to sustain a constitutional cause of action. Yet even if properly drafted Quansah's section 1983 claim would not likely survive a motion to dismiss since, as the district court noted, the City of New York "cannot be sued in the absence of facts showing some predicate for liability beyond respondent superior."

Although pro se pleadings are to be held to less stringent standards than formal pleadings drafted by lawyers, see Haines v. Kerner, 404 U.S. 519, 520 (1972), the district court in this case advised Quansah of the defects in his pleadings and afforded him the opportunity to obtain an attorney or to amend and resubmit the complaint. Allowing Quansah to proceed on his constitutional claims, as currently pleaded, would therefore be tantamount to allowing disruption of governmental functions by meritless lawsuits. See Angola v. Civiletti, 666 F. 2d 1, 4 (2d Cir. 1981).

The district court moreover properly dismissed Quansah's state law claims alleging libel, slander and negligence by the Police Department. Even if the court were to retain jurisdiction over these claims once the federal claims are dismissed, an assumption called into question by the plaintiff's failure to prove diversity of citizenship, appellant's failure to plead compliance with the procedural requirements governing tort actions against the City and County of New York see N.Y. Gen. Mun. Law § 50-i (McKinney 1986), renders his complaint defective as to these state tort law claims as well. Cf. Ezagui v. Dow Chem. Corp., 598 F. 2d 727, 737 (2d Cir. 1979) (dismissing plaintiff's tort claims for failure to serve notice of claim within ninety days after the cause of action arose, pursuant to N.Y. Gen. Mun. Law § 50-e).

Judgment affirmed.

James L. Oakes, Chief Judge.
Amalya L. Kearse, Circuit Judge
Betty B. Fletcher, Circuit Judge

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

(2)

Supreme Court, U.S.
FILED
OCT 10 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-547
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

KENNETH B. QUANSAH, JR.,

Petitioner,

v.

CITY OF NEW YORK, et al.,

Respondents.

BRIEF OF RESPONDENTS CITY OF NEW YORK AND POLICE DEPARTMENT, CITY OF NEW YORK IN OPPOSITION TO A PETTTION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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LEONARD J. KOERNER,*
ELLEN B. FISHMAN,
of Counsel.
*Attorney of Record
October 9, 1990

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Was petitioner's pro se complaint properly dismissed, without prejudice, for failure to state a claim?

2. Were petitioner's state law claims properly dismissed on the additional ground that the complaint failed to allege compliance with the New York General Municipal Law?

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No. 90-547

IN THE
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OCTOBER TERM, 1990

KENNETH B. QUANSAH, JR.,

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BRIEF OF RESPONDENTS CITY OF NEW YORK AND POLICE DEPARTMENT, CITY OF NEW YORK IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATEMENT OF THE CASE

The instant petition seeks review of a Court of Appeals order affirming the dismissal of petitioner's pro se complaint, which alleged false arrest and various related claims. By an order dated March 6, 1990, the Second Circuit unanimously affirmed the judgment dismissing petitioner's

complaint, without prejudice, for failure to state a claim. Fed. R. Civ. P. 12(b)(6). By an order dated May 7, 1990, the Second Circuit denied petitioner's petition for rehearing.

A. Petitioner's Earlier Litigation

The complaint in Quansah v. Baruch alleged that petitioner had been enrolled at a junior college of the City University of New York (CUNY). He expected to be awarded a degree in August 1975, but did not meet the academic requirements for graduation. Thereafter, on the basis of his Bronx Community College credits, petitioner enrolled at Bernard M. Baruch College, a senior college of CUNY. Because of the poor grades petitioner received during his years at Baruch, he was placed on academic probation. Petitioner failed to improve his academic average sufficiently to permit him to register for

further coursework, and he was never graduated from Baruch.

The District Court for the Southern District of New York dismissed the complaint in Quansah v. Baruch, with leave to replead so that petitioner could allege with particularity any claim of racial discrimination. By an order filed August 7, 1981, the District Court dismissed the complaint with prejudice. Because petitioner's notice of appeal from that order was not filed until December 18, 1981, the New York City Corporation Counsel moved to dismiss petitioner's appeal as untimely. By an order filed May 4, 1982, the Court of Appeals for the Second Circuit dismissed the appeal in Quansah v. Baruch.

B. Events Leading up to the Present Litigation

More than five years after the dismissal of the appeal in Quansah v. Baruch, petitioner began telephoning the office of the Corporation Counsel and sending purported

notices of settlement conferences in the case which was no longer pending. On at least two occasions, petitioner appeared in person at the office of the Corporation Counsel. The first such visit was on October 27, 1987, at which time the chief clerk of this office's Appeals Division met with petitioner and tried to explain that the appeal had been dismissed.

On December 3, 1987, petitioner reappeared at this office without an appointment, and demanded to speak to the Corporation Counsel to arrive at a settlement. Numerous civilian employees told petitioner that the Corporation Counsel could not meet with him and asked that petitioner leave the premises. After more than two hours, New York City police officers arrived and arrested petitioner when he persisted in his refusal to leave.

Petitioner alleges that he was in custody until his arraignment on

December 6, 1987, on the charge of criminal trespass in the third degree (N.Y. Penal L. §140.10). That charge ultimately resulted in an adjournment in contemplation of dismissal following a bench trial. By an order dated February 4, 1988, the Criminal Court of the City of New York ordered that during the six-month period expiring August 4, 1988, petitioner was not to enter the premises where the Corporation Counsel's office is located unless he had written permission to do so or unless he had legal papers to serve.

C. **Petitioner's Present Litigation**

On January 13, 1989, the New York City Police Department was served with the complaint in the instant case.[1] The complaint alleged federal jurisdiction and

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[1]The Corporation Counsel thus appeared on behalf of the City of New York and the Police Department; jurisdiction was never obtained over the remaining respondents.

venue under 28 U.S.C. §§1332 and 1391. The first cause of action alleged violations of 42 U.S.C. §§1981 and 1985(b) [sic], deprivation of liberty under the fourteenth amendment, false arrest and false detention. As and for his second cause of action, petitioner alleged libel, slander, and negligence for the supposed recording of false charges on his police record and the dissemination of such charges to other jurisdictions.

Respondents moved pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing this action upon the grounds that the complaint fails to state a claim and that petitioner's state tort claims are barred by N.Y. Gen. Mun. L. §§50-e and 50-i. Petitioner opposed respondents' motion by an unsworn affidavit in which he disavowed any §1983 or tort claim.

By an order dated June 26, 1989, the District Court for the Southern District of

New York granted respondents' motion to dismiss the complaint, without prejudice to petitioner's refiling a complaint on or before July 31, 1989. A judgment to this effect was filed in the District Court on July 6, 1989. Petitioner never filed an amended complaint, but instead took an appeal to the Court of Appeals for the Second Circuit.

REASONS FOR DENYING THE WRIT

The instant petition contains numerous misstatements of fact and law, and fails to present an issue warranting review by this Court. The deficiencies of petitioner's complaint are readily apparent, notwithstanding the less stringent standard by which pro se pleadings are judged under the rule of Haines v. Kerner, 404 U.S. 519 (1972). The Courts below correctly applied this standard and made every effort to explain why the complaint was dismissed.

To flesh out his complaint, petitioner has included matters outside the record. He

also suggests arguments that were not raised in the lower courts. A party may not allege on appeal what he failed to claim below.

In his complaint, petitioner alleged that his arrest at the office of the Corporation Counsel deprived him of rights under 42 U.S.C. §§1981 and 1985. Based on the misguided conviction that his original appeal was still pending, petitioner claims he was entitled to a fair settlement of that earlier action.

Section 1981 prohibits only purposeful racial discrimination. General Building Contractors Association, Inc. v. Pennsylvania, 458 U.S. 375, 387, 389 (1982); Runyon v. McCrary, 427 U.S. 160, 168 (1976). To state a claim under §1981, therefore, the plaintiff must allege racial animus or a racially-motivated misuse of power. Where, as here, the complaint sets forth no allegations regarding petitioner's race, the pleading is fatally deficient.

Section 1985 claims also require much more than the vague and conclusory allegations set forth in petitioner's complaint. A claim of conspiracy to violate civil rights requires detailed fact pleading. The provision upon which petitioner relies also requires precise allegations of class-based animus. Griffin v. Breckenridge, 403 U.S. 88 (1971). Thus, even if the complaint were read as sufficiently making out a claim of conspiracy, it would still be subject to dismissal for failure to allege that the conspiracy had the requisite purpose.

The final federal claim alleged in petitioner's complaint is an assertion that he was deprived of his liberty in violation of the fourteenth amendment.[2] Since Monell v.

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[2]Such a claim cannot be made without invoking 42 U.S.C. §1983, which provides a cause of action for those alleging fourteenth amendment violations. Thus, respondents assumed that this is in the nature of a §1983 (Footnote Continued)

New York City Department of Social Services, 436 U.S. 658 (1978), the City has been considered a "person" within the meaning of §1983. The City is, however, liable only for its own actions, and cannot be liable under any theory of respondeat superior. In the absence of proof that a municipal policy caused petitioner the requisite injury, §1983 provides no remedy. Since petitioner alleged, at best, a single highly unusual incident which is not claimed to result from any municipal policy, he failed to state a claim under Monell and its progeny.

The complaint also included conclusory allegations of false arrest, false detention, libel, slander, and negligence. These are causes of action which sound in tort and are governed by state law. As such, they

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(Footnote Continued)
claim; however, petitioner's opposing "affidavit" disavowed any intent of the kind.

cannot be maintained unless petitioner complies with the pleading requirements of the New York General Municipal Law. Every complaint seeking damages from the City for this kind of injury must include the allegation that thirty days have passed since service of a timely notice of claim. The notice of claim required by N.Y. Gen. Mun. L. §50-e is a condition precedent to municipal liability. Absent properly pleaded and timely compliance with §50-e petitioner cannot pursue his state tort claims.[3]

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[3]Although petitioner did not allege that he is a citizen of a state outside New York, his complaint listed a California mailing address and alleged federal jurisdiction under 28 U.S.C. §1332. If there was true diversity of citizenship in the case at bar, the District Court may have had jurisdiction over the state law causes of action even if petitioner's constitutional claims are deficient and pendent jurisdiction is lacking. Respondents therefore argued that the tort claims alleged in the complaint are dismissible on this alternate ground.

For all the above reasons, the District Court, as affirmed by the Court of Appeals, correctly determined that petitioner's complaint was defective and that it could not withstand respondents' motion to dismiss. Petitioner waived any right to amend his complaint by refusing to accept the District Court's invitation to replead. Accordingly, there is no merit to petitioner's suggestion that he, as a pro se litigant, is entitled to further consideration of his claims.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

October 9, 1990

Respectfully submitted,

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